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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of Edward T. Buford, III

Serial No. 09/912,692

Group Art Unit: 3747

Filed: 07/26/2001

Examiner: R. Chin

Commissioner of Patent and Trademarks
Washington, D.C. 20321

Sir:

PETITION TO REVIVE

Applicant, through counsel, respectfully requests that the Abandonment of the above application be withdrawn.. Further, Applicant respectfully requests the revival of the Application pursuant to 37 CFR §1.137(b) as an unintentionally abandoned application. In support of this request, Petitioner states as follows:

1. That. on July 26, 2001, Applicant filed the instant application including the claims one (1)through eight (8). Subsequently, the subject application was deemed abandoned, but was later revived on Petition filed by the Applicant. Following the revival of said application. Claims (1) through (8) were examined by the Examiner and a First Office Action was mailed to applicant, through counsel, on September 30, 2003. A properly filed response to this First Office Action was filed on January 2004

2. That the record of the office with respect to the filing shows that the application was erroneously deemed abandoned and later reinstated by the office. From a review of the filings submitted to the Office, it appears that due to a clerical error in

counsel's office a working draft of the application was inadvertently submitted to the office as a corrected application. This working draft contained eleven (11) claims instead of eight (8), as in the original filed on July 26, 2001. This error has only very recently come to applicant's attention during a review of the file.

3. That subsequent to the inadvertent misfiling of the second application, the original was reinstated without any reference to the fact that there were two applications , of record. In fact, upon reinstatement of the first filed application (original) the original application was examined and a First Office Action issued on September 30, 2003. The response to the Office Action was filed on or about January 3, 2004. A request for enlargement of time and the necessary fee accompanied the response to the Office Action.

4. That the response to the Office Action addressed the matters cited by the Examiner as a result of his examination of the first filed Application, included in the response was an Amendment to the Specification, withdrawal of rejected claims 1-5; acceptance of allowed claims (6) and (7) and the cancellation and rewriting of rejected Claim 8 as new claim 9. Applicant's amendment of the claims and the Specification was consistent with and fully responsive to the actions taken by the Examiner with respect to Specification and Claims, of record and examined by the Examiner, i.e. Claims 1- 8 of the first filed application.

5. That. the amendment filed by the Applicant in response to the First Office action was rejected by the Office of the LIE as being non-responsive to the Office Action filed on . Specifically, the Office of the LIE asserted that the response to the Office Action was non-compliant because it did not contain all of the claims. On further review, it is clear that the Office of the LIE compared the claims filed with the July 26, 2001 filing with the

later filed working draft of the application submitted to the office..

6. That based upon a review of the application it is apparent that the rejection of Amendment to the First Office Action occurred because the Examiner and the Office of the LIE had reviewed different documents containing different specification and claims. As a consequence, the Office of the LIE incorrectly determined that applicant's response to the Office Action was non-responsive.

7. That the fact that the Office of the LIE and the Examiner had reviewed different documents created a discrepancy between the demands of the Examiner and the Office of the LIE. This discrepancy acted as a bar to Applicant's efforts and ability to submit an appropriate response to the demands of the Office of the LIE. In particular, Applicant was unable to include all claims i.e. the Office of the LIE was requesting from applicant a response which contained 11 claims in its response to the Office Action. It was impossible for the applicant to bridge the gap between the demands of the Notice of Non-Compliant Amendment and the First office Action because the only Claims in the Office Action were (1) through (8) while the Notice of Non-Compliant Amendment referenced 11 claims..

8. Applicant was being asked to include claims in response to the Office Action which were not addressed in the Office Action. Applicant was placed in an untenable situation. The office of the LIE would not accept the Amendment. However, to respond to the LIE, Applicant would face possible rejection by the Examiner for filing a non-responsive amendment.

9. The petition fee required under 37 CFR §1.17(m) is enclosed.

10.. Applicant further states that the entire delay between the reply due and the filing of a grantable petition was unintentional.

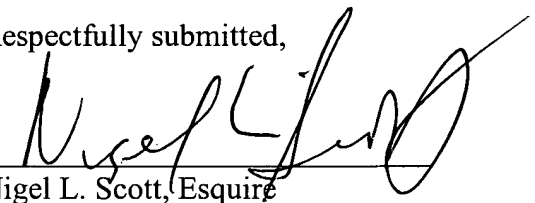
11. A Terminal Disclaimer under 37 CFR §1.137 (d) is not required.

12. Applicant has enclosed his response to the Notice of Non-Compliant Amendment which formed the basis of the rejection of the Response to the first Office Action resulting in the abandonment of the Application by the Examiner.

In further support of the foregoing Petition to Revive, Applicant requests as follows:

- a. The Specification and Claims filed 7-26-2001 and examined by the Examiner be considered The Specification and Claims, of record for the application. Further that the eleven (11) claims referenced by the Office of the LIE in its Notices of Non-Compliant Amendment not be considered a part of the specification and claims of the application.
- b. The Specification and Claims to the Application shall be limited to the Specification and Claims filed on July 26, 2001 and the correction and amendment thereto filed by the Applicant in its First Office Action.
- c. That the Application be reinstated for all purposes.
- d. For such other action as is deemed appropriate.

Respectfully submitted,



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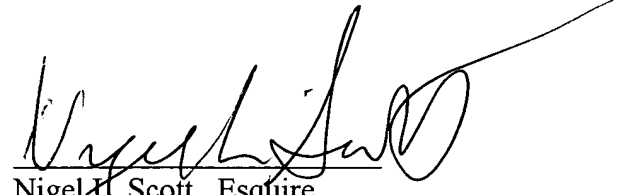


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Petition to Revive was mailed to the Mail

Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this _

¹¹
~~10~~th day _ May __, 2005.



Nigel L. Scott, Esquire



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No. 09/912,692

Group Art Unit: 3747

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Examiner: R. Chin

Commissioner of Patent and Trademarks
Washington, D.C. 20321

Sir:

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT DATED 11/22/04

Applicant, through counsel, respectfully requests review of the Notice of Non-Compliant Amendment mailed 11/22/04 in the above. In support of this request, Petitioner states that the subject notice is not susceptible of correction in the manner requested in the notice because the requirement of the notice is incompatible with action taken by the Examiner in the First Office Action. In support thereof, Applicant states as follows:

1. That on July 26, 2001, Applicant filed the instant application including claims 1 through 8 of said application. A First Office Action was mailed to applicant, through counsel, on September 30, 2003. Applicant's response to this First Office Action which was due on December 30, 2003, was filed on January 3, 2004, and accepted by the office.
2. That the response to the Office Action addressed the matters cited by the Examiner as a result of his examination of the Application as listed in the First Office Action. For the record, Applicant amended the claims and the Specification so as to be responsive to the Specification and Claims reviewed by the Examiner, i.e. claims 1 to 8 of

the Specification as filed July 26, 2001. In this connection, it is to be specifically noted that there was no application or document examined by the Examiner which contained eleven claims. Thus the statement contained in the action by the Office of the LIE that amendment "did not contain all the claims" was inconsistent with the requirements of the First Office Action. As such, the rejection of the amendment by the Office of the LIE was also wrong.

3. That the amendment filed by the Applicant in response to the First Office Action was a correct response to the subject Office Action. The reason for the rejection of the amendment presented by the Office of the LIE that the response to the Office Action was Non-Compliant because the Amendment did not contain all of the claims was erroneous. Moreover, although Applicant's response to the Notice of Non-Compliant Amendment correctly pointed out that the Office of the LIE's non-acceptance of the response to the First Office Action was incompatible with the Examiner's action the response was again rejected by the Office of the LIE without considering the substance of applicant's response.

4. That based upon a review of the application it is obvious that the Examiner and the Office of the LIE had reviewed different documents. As a consequence, the Office of the LIE determined that Applicant's response to the Office Action was non-responsive to the Office Action when, in fact, the Applicant's response was correct and responsive to the Specification and Claims examined by the Examiner.

5. That applicant's response to the Office Action was responsive and Compliant to the Office Action presented by the Examiner. However, upon review applicant now realizes that the Office of the LIE and the Examiner were discussing two different documents in their communications with applicant's counsel. The Examiner, it appears, examined claims related to the application filed on July 26, 2001. On the other hand, the

Office of the LIE rejected the filing submitted by applicant based upon a review of a pleading filed . The July 26, 2001 pleading contained eight (8) claims. The document on which the Office of the LIE based its rejection contained eleven (11) claims. For reference purposes both filings are duplicated and attached hereto. Hence, the Office of the LIE's rejection of the amendment on the grounds that "all claims had not been included in the amendment," is incorrect since all of the claims examined by the Examiner were fully responded to in the response to the First Office Action and the reply to the Notice of Non-Compliant Amendment.

6. That the confusion between the actions of the Office of the LIE and the Examiner has caused the unwarranted and erroneous Abandonment of the Application. In other words, Plaintiff was put into an untenable position by the separate requirements of the Examiner, who examined and referred to eight (8) claims in his Office Action; the Office of the LIE rejected the reply to the Office Action because it did not include an amendment to eleven (11) claims.

7. The substance and language of the claims 1 to 11 which the Office of the LIE refers to in its Notice of Non-Complaint Amendment are not identical to the substance and language of the claims examined by the Examiner.

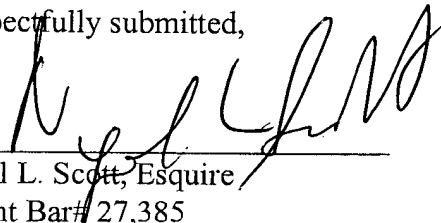
8. That as a result of the action taken by the Office of the LIE in the matter the application was deemed abandoned by the Office. Applicant has been forced to file a Petition for Reinstatement of the application.

WHEREFORE Applicant respectfully requests that the Office of the LIE review its non-acceptance of the amendment dated in light of the fact that Applicant's responses to the Office Action were consistent with the Examiner's instructions in the First Office Action. In

addition, Applicant requests that the Office of the LIE withdraw its second Notice of Non-Compliant Amendment to permit the reinstatement and issuance of the Application.

Further it is requested that the Office of the LIE restrict its consideration of the Examiner in the First Office Action and eliminate consideration of any other claims on file in the file and of record.

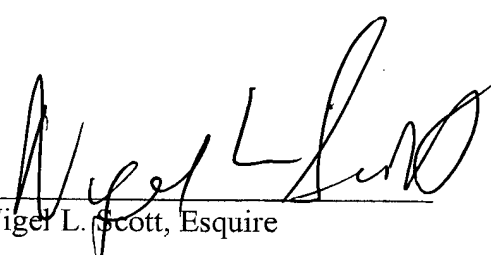
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Notice of Non-Compliant Amendment was mailed, postage prepaid to the office of the LIE, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Va 22313-1450, this 11th day of May, 2005.



Nigel L. Scott, Esquire

ATTACHMENT

With respect to the above, the claims and amendment to the claims deemed pertinent to a review of the inconsistency between the actions of the Examiner and the Office of the LIE are attached below. Accordingly, it would be appreciated if the necessary corrective action is initiated to secure withdrawal of the action by the Office of the LIE and reinstatement of the application.

CLAIMS

What I claim is:

Claim 1.(Original) A bristle consisting of a base end, and a tip end connected to each other by means of a substantially rigid shaft portion wherein said substantially rigid shaft of said bristle has at least one shallow spiral groove along its longitudinal axis and wherein said substantially rigid shaft is sufficiently flexible so that said bristle will twist, bend and rotate on its axis when said base end of said bristle is held in a fixed position on a brush device and vertical and horizontal pressures applied to the tip of said bristle in a brushing motion such that the twisting, bending and rotating of said bristle upon the application of vertical and horizontal pressure on the tip of said bristle causes the tip of said bristle and said substantially rigid shaft of said bristle to become an abrasive device with respect to the surfaces to be cleaned and wherein said twisting, bending and rotating of said bristle increases with the application of increased pressure on the tip of said bristle.

Claim 2.(Original) The bristle as claimed in claim 1 wherein the cross-

sectional diameter of said spiral groove is approximately 10 to 15 percent of the cross-sectional diameter of said bristle and wherein said at least one spiral groove on said bristle runs either in a clockwise or counterclockwise direction and wherein on an individual bristle said at least one spiral groove run in clockwise or counterclockwise direction as desired, to facilitate the removal of plaque and other waste materials during the cleaning process.

Claim 3.(Original) A bristle as claimed in Claim 1 wherein said bristle has at least one spiral groove along said substantially rigid shaft and wherein said groove is of uniform diameter throughout the length of said substantially rigid shaft and wherein the ratio of the diameter of said bristle to the diameter of said spiral groove is approximately 4:1.

Claim 4.(Original) The bristle claimed in claim 10 wherein said bristle made of a plastic material and wherein said bristle is of such flexibility as to be capable of bending and rotating on an axis of thirty to ninety degrees when used in scrubbing or cleaning.

Claim 5.(Original) A bristle as claimed in claim 1 for use in toothbrushes said bristle consisting of a base end, and a tip end connected to each other by a substantially rigid shaft portion and wherein said base end of said bristle is maintained in a fixed position on the head of said toothbrush and wherein said substantially rigid shaft of said bristle has at least one shallow spiral groove along its longitudinal axis and wherein said bristle is capable of standing substantially rigid on

the head of said toothbrush but is sufficiently flexible so that said bristle will twist, bend and rotate on its axis, but remains substantially rigid when vertical and horizontal pressures are applied to the tip of said bristle during brushing and such that the twisting, bending and rotating of said bristle upon the application of vertical and horizontal pressure on the tip of said bristle causes the tip end of said bristle and substantially rigid shaft of said bristle to act as an abrasive device with respect to the surfaces to be cleaned, and wherein the twisting, bending and abrasiveness of said substantially rigid shaft causes said toothbrush to be a more effective cleanser and wherein the application of vertical and horizontal pressure in a back and forth scrubbing motion on the tip of said bristle causes said bristle to twist and rotate in the manner of an agitator of a washing machine, thereby producing fluid cross currents in the saliva and forces the saliva into the spaces in and around the teeth and gums and wherein the twisting and bending of said shaft of said bristle increases the contacts between said shaft of said bristle and the surface of the teeth and gums so that said groove on said shaft of said bristle acts as an abrasive device to remove foreign particles lodged between and around the teeth and gums.

Claim 6.(Original) A brush device for use in cleaning and scrubbing including a bristle receiving body portion having a plurality of substantially rigid bristles disposed therein and wherein said body portion of said device has a plurality of holes adapted for receiving said bristles and wherein said bristles are arranged in tufts of bristles and wherein each of said bristles has at least one spiral groove along

the longitudinal axis of said substantially rigid shaft of said bristle wherein the scrubbing action of said brush device causes said bristle to bend and twist about its axis and to agitate liquid substances which are present in the area to be cleaned and wherein the tips of said bristles and said substantially rigid shaft of said bristles act as cleaning surfaces and whereby said longitudinal axis having said spiral groove acts as an extended scraping device with respect to the surface to be cleaned.

Claim 7.(Original) A toothbrush having a head portion and a handle portion wherein said head portion has a plurality of holes adapted for receiving tufts of bristles in each hole and wherein each tuft consists of not less than ten bristles each of said bristles having at least one spiral groove along the longitudinal axis of said bristle and wherein upon the application of pressure to the tips of said bristles and use of a scrubbing action thereon said bristle bends and rotates and agitates saliva in the mouth and wherein said tips and said longitudinal axis of said bristles act as cleaning surfaces with respect to the teeth and gums and whereby said longitudinal axis having said spiral grooves acts as an extended scraping device for the removal of waste materials, including plaque, from the teeth and gums.

Claim 8.(Original) A brush device as claimed in claim 7 wherein said at least one spiral groove on said bristle runs either in a clockwise or counter clockwise direction and wherein on an individual bristle said at least one spiral groove runs clockwise or counterclockwise, only, and wherein said bristle when arranged in tufts of bristles said at least one spiral groove on said bristle comprising said tufts of

bristles all run in either a clockwise or counterclockwise direction.

CLAIMS

What I claim is:

Claim 1.(Withdrawn) [A bristle consisting of a base end, and a tip end connected to each other by means of a substantially rigid shaft portion wherein said substantially rigid shaft of said bristle has at least one shallow spiral groove along its longitudinal axis and wherein said substantially rigid shaft is sufficiently flexible so that said bristle will twist, bend and rotate on its axis when said base end of said bristle is held in a fixed position on a brush device and vertical and horizontal pressures applied to the tip of said bristle in a brushing motion such that the twisting, bending and rotating of said bristle upon the application of vertical and horizontal pressure on the tip of said bristle causes the tip of said bristle and said substantially rigid shaft of said bristle to become an abrasive device with respect to the surfaces to be cleaned and wherein said twisting, bending and rotating of said bristle increases with the application of increased pressure on the tip of said bristle.]

Claim 2.(Withdrawn) [The bristle as claimed in claim 1 wherein the cross-sectional diameter of said spiral groove is approximately 10 to 15 percent of the cross-sectional diameter of said bristle and wherein said at least one spiral groove on said bristle runs either in a clockwise or counterclockwise direction and wherein on an individual bristle said at least one spiral groove run in clockwise or counter-

clockwise direction as desired, to facilitate the removal of plaque and other waste materials during the cleaning process.]

Claim 3.(Withdrawn) [A bristle as claimed in Claim 1 wherein said bristle has at least one spiral groove along said substantially rigid shaft and wherein said groove is of uniform diameter throughout the length of said substantially rigid shaft and wherein the ratio of the diameter of said bristle to the diameter of said spiral groove is approximately 4:1.]

Claim 4.(Withdrawn) [The bristle claimed in claim 10 wherein said bristle made of a plastic material and wherein said bristle is of such flexibility as to be capable of bending and rotating on an axis of thirty to ninety degrees when used in scrubbing or cleaning.]

Claim 5.(Withdrawn) [A bristle as claimed in claim 1 for use in toothbrushes said bristle consisting of a base end, and a tip end connected to each other by a substantially rigid shaft portion and wherein said base end of said bristle is maintained in a fixed position on the head of said toothbrush and wherein said substantially rigid shaft of said bristle has at least one shallow spiral groove along its longitudinal axis and wherein said bristle is capable of standing substantially rigid on the head of said toothbrush but is sufficiently flexible so that said bristle will twist, bend and rotate on its axis, but remains substantially rigid when vertical and horizontal pressures are applied to the tip of said bristle during brushing and such that the twisting, bending and rotating of said bristle upon the application of vertical and

horizontal pressure on the tip of said bristle causes the tip end of said bristle and substantially rigid shaft of said bristle to act as an abrasive device with respect to the surfaces to be cleaned, and wherein the twisting, bending and abrasiveness of said substantially rigid shaft causes said toothbrush to be a more effective cleanser and wherein the application of vertical and horizontal pressure in a back and forth scrubbing motion on the tip of said bristle causes said bristle to twist and rotate in the manner of an agitator of a washing machine, thereby producing fluid cross currents in the saliva and forces the saliva into the spaces in and around the teeth and gums and wherein the twisting and bending of said shaft of said bristle increases the contacts between said shaft of said bristle and the surface of the teeth and gums so that said groove on said shaft of said bristle acts as an abrasive device to remove foreign particles lodged between and around the teeth and gums.]

Claim 6.(Allowed) A brush device for use in cleaning and scrubbing including a bristle receiving body portion having a plurality of substantially rigid bristles disposed therein and wherein said body portion of said device has a plurality of holes adapted for receiving said bristles and wherein said bristles are arranged in tufts of bristles and wherein each of said bristles has at least one spiral groove along the longitudinal axis of said substantially rigid shaft of said bristle wherein the scrubbing action of said brush device causes said bristle to bend and twist about its axis and to agitate liquid substances which are present in the area to be cleaned and wherein the tips of said bristles and said substantially rigid shaft of said bristles act as

cleaning surfaces and whereby said longitudinal axis having said spiral groove acts as an extended scraping device with respect to the surface to be cleaned.

Claim 7.(Allowed) A toothbrush having a head portion and a handle portion wherein said head portion has a plurality of holes adapted for receiving tufts of bristles in each hole and wherein each tuft consists of not less than ten bristles each of said bristles having at least one spiral groove along the longitudinal axis of said bristle and wherein upon the application of pressure to the tips of said bristles and use of a scrubbing action thereon said bristle bends and rotates and agitates saliva in the mouth and wherein said tips and said longitudinal axis of said bristles act as cleaning surfaces with respect to the teeth and gums and whereby said longitudinal axis having said spiral grooves acts as an extended scraping device for the removal of waste materials, including plaque, from the teeth and gums.

Claim 8.(Cancelled) [A brush device as claimed in claim 7 wherein said at least one spiral groove on said bristle runs either in a clockwise or counter clockwise direction and wherein on an individual bristle said at least one spiral groove runs clockwise or counterclockwise, only, and wherein said bristle when arranged in tufts of bristles said at least one spiral groove on said bristle comprising said tufts of bristles all run in either a clockwise or counterclockwise direction.]

Claim 9.(New) -- The tooth brush as claimed in claim 7 wherein each tuft of bristles consists of not less than ten bristles and wherein each of said bristles has one spiral groove along the longitudinal axis thereof and wherein said spiral groove on

said bristle in an individual tuft of bristles is identical to said spiral groove on all of said bristles in said tuft of bristles and wherein said spiral groove on each of said bristles in said tuft has a clockwise or counter clockwise spiral on said bristle. — —

CLEAN COPY OF CLAIMS

Claim 6.(Allowed) A brush device for use in cleaning and scrubbing including a bristle receiving body portion having a plurality of substantially rigid bristles disposed therein and wherein said body portion of said device has a plurality of holes adapted for receiving said bristles and wherein said bristles are arranged in tufts of bristles and wherein each of said bristles has at least one spiral groove along the longitudinal axis of said substantially rigid shaft of said bristle wherein the scrubbing action of said brush device causes said bristle to bend and twist about its axis and to agitate liquid substances which are present in the area to be cleaned and wherein the tips of said bristles and said substantially rigid shaft of said bristles act as cleaning surfaces and whereby said longitudinal axis having said spiral groove acts as an extended scraping device with respect to the surface to be cleaned.

Claim 7.(Allowed) A toothbrush having a head portion and a handle portion wherein said head portion has a plurality of holes adapted for receiving tufts of bristles in each hole and wherein each tuft consists of not less than ten bristles each of said bristles having at least one spiral groove along the longitudinal axis of said bristle and wherein upon the application of pressure to the tips of said bristles and use of a

scrubbing action thereon said bristle bends and rotates and agitates saliva in the mouth and wherein said tips and said longitudinal axis of said bristles act as cleaning surfaces with respect to the teeth and gums and whereby said longitudinal axis having said spiral grooves acts as an extended scraping device for the removal of waste materials, including plaque, from the teeth and gums.

Claim 9.(New) The tooth brush as claimed in claim 7 wherein each tuft of bristles consists of not less than ten bristles and wherein each of said bristles has one spiral groove along the longitudinal axis thereof and wherein said spiral groove on said bristle in an individual tuft of bristles is identical to said spiral groove on all of said bristles in said tuft of bristles and wherein said spiral groove on each of said bristles in said tuft has a clockwise or counter clockwise spiral on said bristle.

REMARKS

As a result of the latest action by the office of the LIE, the subject invention was abandoned by the Examiner. Applicant has moved to have the application reinstated and has corrected the Amendment in accordance with the requirement of the office of the LIE.

In particular, Applicant has identified the individual claims, as required by the Office of the LIE. However, Applicant has only dealt with the eight (8) claims examined by the Examiner in the Office Action. As such, Applicant believes that all claims which need to be addressed to bring the application in line with the Office Action have been addressed. In particular, Applicant has not included or referenced

the eleven (11) claims mentioned in the Notice of Non-Compliant amendment since these were never examined.

Accoedingly, Applicant requests that the Office of the LIE remove its objections to the Amendment filed in connection with the matter.

Respectfully submitted,

Nigel L. Scott